

DEPARTMENT OF STATE REVENUE

04-20090230P.LOF

Letter of Findings Number: 09-0230P
Sales Tax
For Tax Year 2008

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ISSUE**I. Tax Administration—Late Payment Penalty.**

Authority: IC § 6-8.1-10-2.1.

Taxpayer protests the imposition of a ten percent late payment penalty.

STATEMENT OF FACTS

Taxpayer is an out-of-state corporation doing retail business in Indiana. Taxpayer remits sales tax monthly and files returns quarterly. Taxpayer did not remit sales tax for the months of October 2008 and November 2008. When Taxpayer filed its 2008 fourth quarter return, Taxpayer remitted sales taxes for the entire quarter, including October and November. The Indiana Department of Revenue ("Department") imposed late payment penalties for the two months which were remitted with the quarterly return instead of on the monthly schedule as they were supposed to be remitted. Taxpayer protests the imposition of those penalties. An administrative hearing was conducted via telephone with additional time granted for the submission of supporting documentation. No documentation was received, therefore this Letter of Findings is written based on the information contained in the protest file. Further facts will be supplied as required.

I. Tax Administration—Late Payment Penalty.**DISCUSSION**

Taxpayer protests the imposition of ten percent late payment penalty. Taxpayer states that it acted reasonably and that it has a good record of timely remittance of sales tax. The remittance of the October and November 2008 sales tax was inadvertently sent with the fourth quarter return instead of on the monthly schedule due to the departure of a longtime employee whose duty it was to remit sales tax. Taxpayer believes that these circumstances are sufficient to warrant waiver of penalty.

The Department refers to IC § 6-8.1-10-2.1, which states in relevant parts:

If a person:

- (1) fails to file a return for any of the listed taxes;
- (2) fails to pay the full amount of tax shown on the person's return on or before the due date for the return or payment;
- (3) incurs, upon examination by the department, a deficiency that is due to negligence;
- (4) fails to timely remit any tax held in trust for the state; or
- (5) is required to make a payment by electronic funds transfer (as defined in [IC 4-8.1-2-7](#)), overnight courier, or personal delivery and the payment is not received by the department by the due date in funds acceptable to the department;

the person is subject to a penalty.

(b) Except as provided in subsection (g), the penalty described in subsection (a) is ten percent (10[percent]) of:

- (1) the full amount of the tax due if the person failed to file the return;
- (2) the amount of the tax not paid, if the person filed the return but failed to pay the full amount of the tax shown on the return;
- (3) the amount of the tax held in trust that is not timely remitted;
- (4) the amount of deficiency as finally determined by the department; or
- (5) the amount of tax due if a person failed to make payment by electronic funds transfer, overnight courier, or personal delivery by the due date.

(c) For purposes of this section, the filing of a substantially blank or unsigned return does not constitute a return.

(d) If a person subject to the penalty imposed under this section can show that the failure to file a return, pay the full amount of tax shown on the person's return, timely remit tax held in trust, or pay the deficiency determined by the department was due to reasonable cause and not due to willful neglect, the department shall waive the penalty.

(e) A person who wishes to avoid the penalty imposed under this section must make an affirmative showing of all facts alleged as a reasonable cause for the person's failure to file the return, pay the amount of tax shown on the person's return, pay the deficiency, or timely remit tax held in trust, in a written statement containing a declaration that the statement is made under penalty of perjury. The statement must be filed with

the return or payment within the time prescribed for protesting departmental assessments. A taxpayer may also avoid the penalty imposed under this section by obtaining a ruling from the department before the end of a particular tax period on the amount of tax due for that tax period.

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(Emphasis added).

In this case, Taxpayer has not provided any documentation in support of its protest. Therefore, Taxpayer has not affirmatively established that the failure to pay timely remit tax held in trust was due to reasonable cause and not due to negligence. The ten percent penalties were properly imposed.

FINDING

Taxpayer's protest is denied.

Posted: 04/28/2010 by Legislative Services Agency

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